

Application No. 10/760,999
Amendment Dated July 27, 2007
Reply to Office Action of June 28, 2007
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Remarks

Upon entry of the present amendment, claims 1-24 are pending, with claims 5-8 amended. Claims 5-8, which depend from claim 1, have been amended to reinforce claim 1's requirement that the incision device can be either a cutting device or a marking device. No new matter has been added by these amendments.

Restriction Requirement

In the Office Action, the Examiner required restriction among the following claim sets:

- Claims 1-9: Drawn to a method for performing an incision on a skin surface.
- Claims 10-24: Drawn to a computer aided surgical system.

Applicants provisionally elect claims 1-9 with traverse. Applicants respectfully submit that examination of the claims of the entire application will not impose an undue burden and that therefore the restriction requirement is improper. See MPEP §803.

Election Requirement

In the Office Action, the Examiner also alleged that the application contains claims directed to two distinct species:

- Species 1 – directed to a computer guided system including an incision device.¹
- Species 2 – directed to a computer guided system including a marking device.²

¹ The undersigned presumes that Species 1 would also encompass methods involving such an incision device.

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The Office Action requires election between the two species, alleging that none of the pending claims are generic to both species. Applicants provisionally elect Species 1 with traverse, which reads on claims 1-21 (including claims 1-9, which were provisionally elected above). Applicants respectfully submit that "Species 2" identified by the Examiner is not distinct from "Species 1," but is actually a sub-species of Species 1. Indeed, claims 1-21 all recite (directly or indirectly) an "incision device, wherein the incision device is a cutting device or a marking device."³ None of claims 1-21 limit the incision device to being a cutting device or a marking device. Rather, systems or methods that employ at least one of a cutting device or a marking device come within the scope of claims 1-21 (assuming the other limitations of those claims are met).

² The undersigned presumes that Species 2 would also encompass methods involving such a marking device.

³ Claim 22, from which claims 23-24 depend, does not recite a incision device, but instead an "indicator device." Claim 23 recites that indicator device is a marking device.

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Conclusion

In light of the provisional elections with traverse, the undersigned is of the opinion that this application is in a condition for allowance and respectfully requests the same. No fees are believed due at this time, however, to the extent that belief is incorrect, the Commissioner is authorized to charge any additional fees that may be due for this Response to Deposit Account No. 11-0855.

If the Examiner believes that there are any issues that can be resolved via a telephone conference, or that there are any informalities that can be corrected by an Examiner's amendment, please call Michael Bertelson at (404) 815-6291.

Respectfully submitted,



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